

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:1

PLR-152137-08

Date: May 20, 2009

LEGEND

X =

D1 =

D2 =

Dear :

This responds to a letter dated December 4, 2008, submitted on behalf of X, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election under § 1362(e)(3) of the Internal Revenue Code.

FACTS

According to the information submitted, X elected to be treated as an S corporation effective for its taxable year beginning D1. X's S election terminated by revocation effective D2, resulting in the division of X's termination year into an S short year and a C short year pursuant to § 1362(e)(1). At the time of the execution of the revocation, an election pursuant to § 1362(e)(3) was also prepared and executed. X intended to file the election with its tax return for its C short year. However, the § 1362(e)(3) election statement inadvertently was not included with X's return for the C short year.

X represents that it relied upon its tax advisor, an attorney, to file all the necessary forms to make the election. X further represents that it prepared all of its records and

tax returns on the basis of and consistent with the § 1362(e)(3) election having been made.

LAW AND ANALYSIS

Section 1362(e)(1) provides that, in the case of an S termination year, the portion of the year ending before the first day for which the termination is effective shall be treated as a short taxable year for which the corporation is an S corporation, and the portion of the year beginning on the first day shall be treated as a short taxable year for which the corporation is a C corporation.

Section 1362(e)(2) provides that, for purposes of determining which items are to be taken into account for each of the short taxable years, generally items of income, loss, deduction, or credit described in § 1366(a)(1)(A) (concerning items the separate treatment of which could affect the liability for tax of any shareholder), as well as nonseparately computed income or loss, shall be allocated on a pro rata basis to each day of the S termination year.

Under section 1362(e)(3)(A), a corporation may elect to have section 1362(e)(2) not apply. Section 1362(e)(3)(B) provides that, in order for the corporation to make the election under § 1362(e)(3)(A), all persons who are shareholders in the corporation at any time during the S short year and all persons who are shareholders in the corporation on the first day of the C short year must consent to the election.

Section 1362(e)(4) provides that the term "S termination year" means any taxable year of a corporation in which a termination of an election made under § 1362(a) takes effect (other than on the first day thereof).

Section 1.1362-6(a)(5) of the Income Tax Regulations provides that, to elect not to apply the pro rata allocation rules to an S termination year, a corporation files a statement that it elects under § 1362(e)(3) not to apply the rules provided in § 1362(e)(2). Section 1.1362-6(a)(5) further provides that the statement must be filed with the corporation's return for the C short year.

Under § 301.9100-1(c), the Commissioner may grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code, except subtitles E, G, H, and I. Section 301-9100-1(b) defines the term "regulatory election" as including an election whose due date is prescribed by a regulation published in the Federal Register.

Sections 301.9100-1 through 301.9100-3 provide the standards that the Commissioner will use to determine whether to grant an extension of time to make an election. Section 301.9100-1(a). Section 301.9100-2 provides automatic extensions of time for making

certain elections. Section 301.9100-3 provides rules for requesting extensions of time for regulatory elections that do not meet the requirements of § 301.9100-2.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interest of the government. Section 301.9100-3(a).

CONCLUSION

Based solely on the facts submitted and the representations made, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. Consequently, X is granted an extension of time of sixty (60) days from the date of this letter to make a § 1362(e)(3) election. The election should be made in a written statement filed with the applicable service center for association with X's tax return for its C short year. A copy of this letter should be attached to the statement filed. The election must satisfy the requirements of §§ 1.1362-6(a)(5) and 1.1362-6(b)(1).

Except as expressly provided herein, no opinion is expressed or implied concerning the federal income tax consequences of the transactions described above under any other provision of the Code. Specifically, we express no opinion as to whether X otherwise qualifies as an S corporation for federal tax purposes.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to the Power of Attorney on file with this office, a copy of this letter is being sent to X's authorized representatives.

Sincerely,

Curt G. Wilson

Curt G. Wilson
Deputy Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy for § 6110 purposes